

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Carl J. Richter :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 22 of the Tax Law
for the Year 1974. :

State of New York

County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 13th day of March, 1981, he served the within notice of Decision by certified mail upon Carl J. Richter, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Carl J. Richter
3737 64th St.
Woodside, NY 11377

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
13th day of March, 1981.

Annex A. Hagedorn

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 13th day of March, 1981, he served the within notice of Decision by certified mail upon John Georgins the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. John Georgins
570 7th Ave.
New York, NY 10018

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
13th day of March, 1981.

Cynthia A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

March 13, 1981

Carl J. Richter
3737 64th St.
Woodside, NY 11377

Dear Mr. Richter:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
John Georgins
570 7th Ave.
New York, NY 10018
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

CARL J. RICHTER

DECISION

for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1974.

Petitioner, Carl J. Richter, 3737 64th Street, Woodside, New York 11377, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1974 (File No. 19714).

On September 9, 1980, petitioner informed the State Tax Commission, in writing, that he desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file. After due consideration of the record, the Commission renders the following decision.

ISSUE

Whether education expenses are required to be reduced by Veteran's Administration benefits received by petitioner.

FINDINGS OF FACT

1. Petitioner, Carl J. Richter, timely filed a New York State Income Tax Resident Return for the year 1974, on which petitioner deducted an education expense of \$6,030.00.

2. On May 23, 1977, the Audit Division issued a Notice of Deficiency for \$766.05, plus interest, for the year 1974, along with a Statement of Audit Changes, which indicated the following:

<u>ITEM</u>	<u>CLAIMED</u>	<u>ALLOWED</u>	<u>ADJUSTMENT</u>
Modification of State and local tax subtractions			\$1,619.00
Education Expense	\$6,030.00	\$900.00	5,130.00
Medical Expense	-0-	75.00	(75.00)
Contributions	-0-	150.00	150.00
TOTAL ADJUSTMENT			<u>\$6,534.00</u>

The sole issue raised by petitioner, Carl J. Richter, was the adjustment to education expense.

3. Petitioner Carl J. Richter, was employed by Trans International Airlines as a pilot since 1972. On October 11, 1974, petitioner entered into a written agreement with United Airlines, Inc., whereby he agreed, in part;

- (a) to participate in a course of training, entitled "DC-8 Turbojet Pilot Rating Course".
- (b) to pay the sum of \$5,701.00 for the aforementioned training.
- (c) to "execute a promissory note payable to the order of United Airlines on or before commencement of training".
- (d) to endorse to United Airlines his reimbursement check from the Veterans' Administration.

4. Petitioner received and endorsed to United Airlines \$5,130.90 in Veteran's Administration benefits. The difference of \$571.00 was paid by petitioner from his own funds as well as out-of-pocket expenses of \$329.00, which was accepted by the Audit Division and is not at issue.

5. On October 19, 1974, petitioner was awarded a certificate of achievement in successfully completing the course of flight training.

CONCLUSIONS OF LAW

A. That the education expenses of \$6,030.00 are deductible and cannot be reduced by the Veteran's Administration benefits received by petitioner, Carl J. Richter, in accordance with the meaning and intent of section 162 of the Internal Revenue Code, United States Treasury Regulation 1.162-5 and Article 22 of the Tax Law (Revenue Ruling 62-213, 1962-2 CB59).

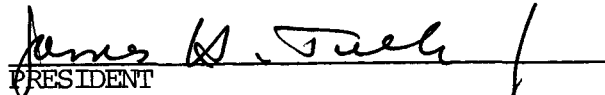
B. That the petition of Carl J. Richter is granted to the extent that the total adjustment of \$6,524.00 is reduced by \$5,130.90.

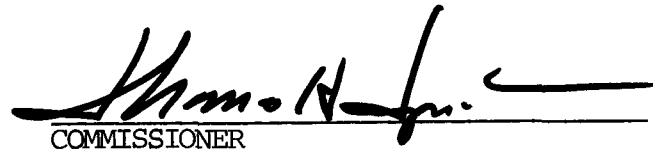
C. That the Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued May 23, 1977, and that except as so granted, the petition is in all other respects denied.

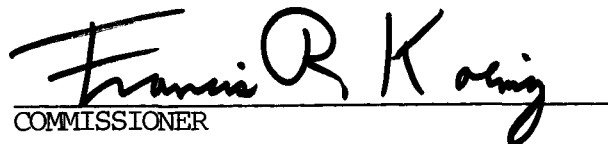
DATED: Albany, New York

STATE TAX COMMISSION

MAR 13 1981


PRESIDENT


COMMISSIONER


COMMISSIONER